

D.T.E. 02-75-A

Petition of Bay State Gas Company, pursuant to G.L. c. 164, § 69I, for approval by the Department of Telecommunications and Energy of its Long-Range Forecast and Supply Plan for the five-year period November 1, 2002, through October 31, 2007.

ORDER DENYING MOTION OF BAY STATE GAS COMPANY FOR
RECONSIDERATION

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I. INTRODUCTION

On February 24, 2004, the Department of Telecommunications and Energy (“Department”) issued an Order approving Bay State Gas Company’s (“Bay State”) or (“Company”) Long-Range Forecast and Supply Plan (“Plan”) except for a proposed ten percent reserve margin. Bay State Gas Company, D.T.E. 02-75 (2004). The Company had requested approval to include a ten percent reserve margin in its planning requirements to provide for the possibility that grandfathered transportation customers¹ would return to the Company’s system. D.T.E. 02-75, at 25. The Department denied that request, because “[local distribution companies] are not required to serve customers if the addition of those new customers to the system would increase average costs.” Id. at 32.

On March 15, 2004, Bay State filed a motion for reconsideration of D.T.E. 02-75 (“Motion”). Specifically, the Company requests that the Department reconsider its ruling that Bay State is not required to serve customers if the addition of those new customers to the Company’s system would increase average costs (Motion at 1).

II. STANDARD OF REVIEW

The Department’s procedural rule, 220 C.M.R. § 1.11(10), authorizes a party to file a motion for reconsideration within twenty days of service of a final Department order. The Department’s policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the

¹ A grandfathered customer is a customer who has left a local gas distribution company’s firm gas sales service and is not subject to mandatory capacity assignment (Tr. at 94-95).

record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1987).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would warrant a material change to a decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

III. COMPANY'S MOTION

Bay State seeks reconsideration of the Department's finding that Bay State is under no regulatory obligation to plan for or to provide service to grandfathered transportation customers who have no assigned capacity (Motion at 1). In addition, the Company seeks

reconsideration of the Department's finding that local distribution companies (“LDCs”) “are not required to serve customers if the addition of those new customers to the system would increase average costs” (Motion at 1, citing D.T.E. 02-75, at 32).

To support its request, the Company asserts that grandfathered customers are not “new customers” (id. at 1). The Company also cites to Natural Gas Unbundling, D.T.E. 98-32-B at 57-58 (1999), where the Department concluded that the LDCs must retain their obligation to plan for and procure necessary upstream capacity to serve all firm customers (id. at 3). The Company argues that the possibility of the sudden return of grandfathered customers creates uncertainties in reliability for Bay State and its firm customers (id.). The Company argues that the delivery obligation established by the Department in D.T.E. 98-32-B stands as regulatory policy until the Department affirmatively changes it (id. at 2). Finally, the Company states its concern that if grandfathered customers physically draw in significant quantities of gas from Bay State’s system (even if they are otherwise not entitled as a contractual matter) on a peak day or when there is upstream physical impairment, a loss of system reliability to firm customers may result (id.). The Company contends that the Department should take a fresh look at this issue to ensure that the Department is aware of the possibility of system disruption (id.).

IV. ANALYSIS AND FINDINGS

In rejecting the Company’s proposed ten percent reserve contingency in D.T.E. 02-75, the Department directly addressed the issues raised by Bay State in its Motion. The Department ruled that grandfathered transportation customers returning to Bay State’s firm

sales service would be treated as new customers. D.T.E. 02-75, at 32. The Department stated that LDCs are not required to serve new customers if it would increase average costs to the Company's existing firm customers. Id., citing Boston Gas Company, D.P.U. 88-67, at 282-283 (1989). The Department further cited to section 15.6 of Bay State's current Terms and Conditions, which makes clear that Bay State is under no obligation to provide default service to any returning customer in excess of the level of recallable capacity assigned to the customer's former supplier. D.T.E. 02-75, at 32-33.

In its Motion, Bay State does not bring to light any unknown or undisclosed facts that would warrant a material change to our previous decision. Furthermore, Bay State has not identified any extraordinary circumstance that would require the Department to reexamine our decision in D.T.E. 02-75 or to modify our policy on the treatment of grandfathered customers. Rather, the Company merely reargues issues considered and decided in D.T.E. 02-75. The Department, therefore, denies Bay State's Motion.

It may be helpful at this juncture, however, to restate Bay State's obligations in dealing with grandfathered customers. As an initial matter, Bay State is mistaken in its reading of D.T.E. 98-32-B, and the Department's policy on an LDC's obligation concerning service for firm customers. In D.T.E. 98-32-B at 57-58, the Department stated "the LDCs must retain their obligation to plan for and procure necessary upstream capacity to serve all firm customers." This requirement pertains only to existing firm customers; it does not require LDCs to plan their capacity acquisitions for future firm customers. The Department cannot expect the Company's existing firm sales customers to assume the cost responsibility associated

with acquiring and maintaining capacity and/or commodity to serve grandfathered transportation customers when they return to default service. Bay State's proposed solution, a contingency reserve, would require firm sales customers to pay for gas that may or may not be used by grandfathered transportation customers. This planning mechanism violates Department precedent regarding cost causation, i.e., cost responsibility must follow cost incurrence. D.T.E. 98-32-B at 31, citing Boston Gas Company, D.P.U. 96-50 (Phase I) at 133-134 (1996); Boston Gas Company, D.P.U. 93-60, at 331-337, 410, 432 (1993); Bay State Gas Company, D.P.U. 92-111, at 54, 283-284, 311-312 (1992); Boston Edison Company, D.P.U. 1720, at 114 (1984); Generic Investigation of Rate Structures, D.P.U. 18810, at 14 (1977).

Furthermore, Bay State's own Terms and Conditions make clear its obligations for serving grandfathered customers who seek to return to the Company's firm sales service (default service). Sections 15.5 and 15.6 of the Company's Terms and Conditions specify the maximum volumes for which Bay State is required to provide default service to a grandfathered customer as well as the conditions under which such service is to be provided.²

² The pertinent sections state:

§15.5 In the event that a Supplier that has been assigned Capacity on behalf of a Customer pursuant to Section 13.0 of these Terms and Conditions becomes ineligible to serve said Customer pursuant to Sections 11.6.5, 12.6.3, or 24.3 of these Terms and Conditions, the Company will provide the Customer with Default Service up to a maximum daily level of Gas Usage not to exceed the TCQ of recallable capacity assigned to the Customer's Supplier.

§15.6 The Company shall be under no obligation to provide Default Service to a Customer at a maximum daily level in excess of the TCQ of recallable capacity (continued...)

Under section 15.5, the Company is obligated to provide default service to a customer up to a maximum daily level not to exceed the total contract quantity (“TCQ”) of recallable capacity assigned to the customer’s supplier. Further, pursuant to section 15.6, the Company is not obligated to provide default service to a customer at a level in excess of the TCQ of recallable capacity assigned to a supplier on behalf of that customer. Section 15.6 further states that the Company may elect to provide default service to a customer only if adequate system supplies and capacity are available, and that such service is to be provided upon the same terms and subject to the same conditions as any new customer seeking to take default service (emphasis added). Therefore, grandfathered transportation customers are indeed considered new customers when they return to default service and seek service for all quantities that exceed their TCQ of recallable capacity.

Bay State also expressed concern that grandfathered transportation customers will use Company gas without authorization, thereby putting the Company’s distribution system at operational risk (Motion at 3). Although the Company’s Terms and Conditions provide for financial penalties against the unauthorized taking of gas, they do not address the operational issue of a potential loss of system pressure that could be caused by such actions. Therefore, we find it necessary to outline a plan for Bay State that will address the operational risks posed

² (...continued)
assigned to a Supplier on behalf of said Customer.

The Company may elect to provide Default Service to such Customer if, and to the extent that, adequate system capacity and supplies are available and upon the same terms and subject to the same conditions as any new Customer seeking to take Default Service.

by the unauthorized taking of gas. First, the Company must immediately notify and remind all of its grandfathered customers that unauthorized overtakes are subject to penalties pursuant to the Company's Terms and Conditions. Bay State must explain to these customers that such overtakes may threaten the integrity of the Company's distribution system and therefore will result in disconnects from the system. We direct the Company to implement a system under which Bay State will have the ability to monitor usage by these customers on a daily basis and to disconnect such customers if usage exceeds their TCQ. We further direct the Company to submit a report to the Department and explain how this system will work. This process will mitigate any risk of system disruption as a result of the actions of grandfathered customers.

V. ORDER

After due notice and consideration, it is

ORDERED: That the motion of Bay State Gas Company for reconsideration of the Department's Order in D.T.E. 02-75 is DENIED; and it is

FURTHER ORDERED: That Bay State Gas Company shall comply with all other orders and directives contained herein.

By Order of the Department,

Paul G. Afonso, Chairman

James Connelly, Commissioner

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).